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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,018	06/25/2003	George J. Wagner III	AME.202	5684
24062	7590	02/25/2005	EXAMINER	
CAMORIANO & ASSOCIATES 8225 SHELBYVILLE ROAD LOUISVILLE, KY 40222			BUECHNER, PATRICK M	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/606,018

Applicant(s)

WAGNER ET AL.

Examiner

Patrick M Buechner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 15-18, 20-22 is/are rejected.
- 7) ☒ Claim(s) 12-14 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/25/03, 12/11/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claim 7 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 7 which depends from claim 6 has exactly the same limitations as claim 6, with no additional limitations and therefore does not further limit claim 6.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-7, 10, 15, 16 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner et al. (US 5,605,254) in view of Kearney (US 3,750,915).

Wagner discloses a pour spout with angled, parallel, coterminous air tube (28) and dispensing tube (22). Wagner also discloses a bottle (20) with a removable seal (50). Wagner also discloses a cylindrical base (12) with threads (14), an annular ledge (18) to seal against the bottle and both the air tube and dispensing tube with lower termination points above the ledge (Figure 10). Wagner also discloses an abrupt edge (36) to prevent drips. Wagner also discloses

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a closure (38) with sealing projections for each of the air and dispensing tubes (44, 42 respectively). Wagner also discloses an outwardly projecting flange (35) on the base.

Wagner does not disclose the air tube having a small diameter portion that extends below the lower termination point of the dispensing tube.

Kearney teaches an aerated pourer with an air tube (22) having a small diameter portion (23) that extends below the lower termination point of the dispensing tube (Figure 3).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the air tube of Wagner with the small diameter portion that extends below the lower termination point of the dispensing tube, as taught by Kearney, so that the air tube does not become clogged (Kearney column 2, lines 25-30).

4. Claims 8, 9, 11, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wagner in view of Kearney as applied to claims 1, 7 and 16 above, and further in view of Freeman (US 4,452,381).

Wagner in view of Kearney disclose all the limitations of claims 8, 9, 11, 17 and 18, as discussed above in 3, with the exception of the abrupt edge located at the lower termination point of the dispensing tube.

Kearney teaches an aerated pour spout with an abrupt edge located at the lower termination point of the dispensing tube (Figure 3).

Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to move the location of the abrupt edge in Wagner in view of Kearney to the lower termination point of the dispensing tube as taught by Freeman, since placing the abrupt

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edge further from the dispensing opening would inherently allow for the flow to become less turbulent at the dispensing opening and therefore allow for easier, smoother pouring.

Allowable Subject Matter

5. Claims 12-14 and 19 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jou (US 5,072,861) discloses a liquid dispensing controller.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick M Buechner whose telephone number is (571) 272-4923.

The examiner can normally be reached on 6:30am-5:00pm M-Th.

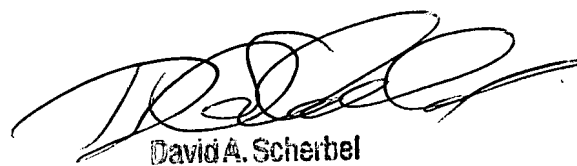
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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David A. Scherbel
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Group 3700